

December 24, 1953
Letter Opinion
No. 53-180-L

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ARIZONA ATTORNEY GENERAL**

C. G. Salsbury, M.D.
Director of Arizona State
Department of Health
State Office Building
Phoenix, Arizona

Dear Dr. Salsbury:

We are in receipt of your recent letter requesting information as to whether the Anatomy Board is liable for burial expenses for a body previously applied for by St. Mary's Hospital in Tucson, then rejected by that institution, and now located at a mortuary.

The care and disposition of dead human bodies has such a relation to the public health department that nearly all states regulate such matters by statute.

The Legislature of Arizona in 1951 created the Anatomy Board under and by virtue of Section 68-316, A.C.A. 1939, as amended. This statute reads as follows:

"68-316. (Anatomy board)---Creation of board--
Purpose.--The anatomy board of Arizona is hereby
created for the purpose of distributing certain
dead human bodies as hereinafter described to
qualified institutions and persons hereinafter
named to be used for the promotion and fur-
therance of the science and art of medicine
and dentistry." (Emphasis supplied)

Those bodies over which the Anatomy Board has power of disposition is provided for in Section 68-318, A.C.A. 1939, as amended, which states:

"68-318. Duty to notify and deliver.--
It shall be the duty of every public
officer, agent and servant of the state,
and of every county, city and town, and
every public institution supported in
whole or in part at public expense, hav-
ing in his or its possession the dead

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human body of any person for burial at public expense, to notify the board within twenty-four (24) hours after receipt thereof, and, upon instruction from the board, to deliver such body without fee or reward to the institution or person designated by the board." (Emphasis supplied)

With regard to the expenses of the delivery of these bodies, Section 68-320, A.C.A. 1939, as amended, provides:

"68-320. Delivery--Expenses.--Said board or its agent may take and receive or direct the delivery of such bodies reported to it as aforesaid to such hospitals, colleges and universities, physicians, surgeons and dentists as it may deem entitled thereto and as requested in writing to receive the same, preference being given to hospitals and institutions of higher learning. All expenses of such delivery as may be specified by said anatomy board shall be paid by those receiving the body." (Emphasis supplied)

It seems apparent from the above statutes that the Legislature intended that the Anatomy Board should in no way incur any expenses pertaining to the disposition of bodies under its jurisdiction. This is even more apparent in view of the fact that no appropriation has been made to the Anatomy Board by the Legislature.

Therefore, in this case, if the bodies were delivered to St. Mary's Hospital, all expenses incurred in that delivery as specified by the Anatomy Board, must be paid by the hospital.

Relating to the expenses of burial of indigents, there is nowhere authority given to the Anatomy Board to pay for such expenses.

As provided by Section 17-1103, A.C.A. 1939, if there is not sufficient property in the estate of a deceased to pay the expenses of burial, such expenses are a charge against the county. Section 17-1103, Supra, states in part:

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"17-1103. Justice of peace as coroner--
Burial of indigent deceased--Property
found on body.--Each justice of the peace
shall be ex officio coroner within his
precinct. In his absence from the pre-
cinct any other justice in the county
may act as coroner therein. When an in-
quest is held by the coroner, and no
other person takes charge of the body
of the deceased, he must cause it to
be decently interred; and, if there is
not sufficient property of the estate
of the deceased to pay the necessary
expenses of the burial, the expenses
are a legal charge against the county.
* * * (Emphasis supplied)

It is, therefore, our opinion that the Anatomy Board has neither power nor authority to defray burial expenses for the body here involved.

We hope that this information will be of assistance to you.

Yours very truly,

WILLIAM T. BIRMINGHAM
Assistant to the
Attorney General

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